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NOV 19 2003

In re Application of	:	DECISION ON PETITION
BLUME et al.	:	
Application No. 09/868,606	:	
Filed: September 17, 2001	:	
Attorney Reference No. 4117-US	:	

This is a decision on the petition filed June 19, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition to withdraw the holding of abandonment is **GRANTED**.

A non-final Office action was mailed on December 5, 2002, setting forth a three-month period of response. The application became abandoned on March 6, 2002 by operation of law.

Petitioner states that the non-final Office action was never received by applicant's representative and attests to the fact that a search of the file jacket and docket records indicates that the non-final Office action was not received. The petition is accompanied by a copy of the docket record where the non-received notice would have been entered.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the non-final Office action was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

Applicant has provided the required statement attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. Further, applicant has provided a copy of the docket record where the non-received Office action would have been received had it been received and docketed.

Since applicant has made the requisite showing required under M.P.E.P §711.03(c), the holding of abandonment is withdrawn.

The application file is being forwarded to the Technical Support staff for re-mailing the non-final Office action. The shortened period for response set therein will be reset to expire three months from the date the Office action is remailed.

Questions regarding this decision should be directed to Jose' G. Dees at (703) 308-4628.



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